



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States will meet during a plenary session to vote on modifications to a recommendation that was considered at its 74th Plenary Session on June 17, 2021. The plenary session will take place entirely by electronic voting, without an in-person component. Written comments regarding the modifications may be submitted in advance, and the voting results will be accessible to the public.

DATES: The meeting (*i.e.*, electronic voting) will take place beginning on Monday, September 13, 2021, at 9 a.m., and continue through Friday, September 17, 2021, at 12 noon.

ADDRESSES: The meeting will be conducted by electronic voting and will have no physical location or in-person component. Additional information about the meeting will be available on the agency's website prior to the meeting at <https://www.acus.gov/meetings-and-events/event/75th-plenary-session>.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW, Washington, DC 20036; Telephone 202-480-2080; email smcgibbon@acus.gov.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: The Assembly will vote on the adoption of a single proposed amended recommendation, *Clarifying Statutory Access to Judicial Review of Agency Action*, which is described below.

Conduct of the Online Meeting: Electronic voting on this amended proposed recommendation will take place over a period of several days. The period for voting will commence at 9 a.m. on Monday, September 13, and will end at 12 noon on Friday, September 17. Assembly members may vote by email at any time during this period and the public may submit comments in writing.

Clarifying Statutory Access to Judicial Review of Agency Action. As was the case with the original proposed recommendation (which the Assembly considered at the Conference's 74th Plenary Session on June 17, 2021), this amended proposed recommendation urges Congress to enact a cross-cutting statute that addresses certain recurring technical problems in statutory provisions governing judicial review of agency action that may cause unfairness, inefficiency, or unnecessary litigation. It also offers a set of drafting principles for Congress when it writes new or amended judicial review statutes. It draws in large part on ACUS's forthcoming *Sourcebook of Federal Judicial Review Statutes*, which analyzes the provisions in the U.S. Code governing judicial review of rules and adjudicative orders and identifies recurring drafting problems in them.

The original proposed recommendation was not adopted at the 74th Plenary Session. Instead, the Assembly remanded the recommendation to the Conference's Committee on Judicial Review to address a technical matter relating to rulemakings with post-promulgation comment periods (*i.e.*, rulemakings in which an agency promulgates a rule before receiving and considering public comment).

The Committee on Judicial Review met during a public meeting on July 22, 2021, to address the remand. Members of the Committee unanimously agreed that the optimal approach to the

problems posed by rulemakings with post-promulgation comment periods is to exempt such rulemakings from the scope of the recommendation. Numbered paragraphs 2 and 4(b) of the recommendation were therefore modified to clarify that they apply only in cases where a final rule is published in the *Federal Register* after the public has been given a chance to comment on the rule. Corresponding edits were made to the preamble of the recommendation.

Additional information about the recommendation, including the history of its development, prior public comments, etc., can be found at the 75th Plenary Session page on the Conference's website prior to the start of the meeting: <https://www.acus.gov/meetings-and-events/event/75th-plenary-session>.

Public Participation: The public may participate by submitting comments before and during the voting process. Relevant public comments will be posted, generally the same day, on the 75th Plenary Session webpage. Voting members will have the opportunity to view and consider the comments during the voting process. The voting results will be made available on the same webpage after voting has concluded.

Written Comments: Persons who wish to comment on the amendments may do so by submitting a written statement either online by clicking "Submit a comment" on the 75th Plenary Session webpage shown above or by mail addressed to: September 2021 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW, Washington, DC 20036. Written submissions must be received prior to the end of voting at 12:00 noon (EDT), Friday, September 17, 2021.

Per the Conference's bylaws (located on the agency's website at https://www.acus.gov/sites/default/files/documents/20190712_Final%20Assembly-Approved%20ByLaw%20Amendments.pdf), Conference members who disagree in whole or in part with a recommendation adopted by the Assembly are entitled to enter a separate statement, which will be published together with the official publication of the recommendation.

Notification of intention to file a separate statement must be given to the Executive Director not later than the last day of the plenary session at which the recommendation is adopted, and any such separate statement must be filed within 10 calendar days after the close of the session.

Authority: 5 U.S.C. 595.

DATED: August 17, 2021.

Shawne McGibbon,

General Counsel.

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